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published in
Nederduits Gereformeerde Teologiese Tydskrif
2012

document version
Publisher's PDF, also known as Version of record

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ABSTRACT

Because of the importance of the increasing integration of European nation states into the European Union, this article describes the influence of this body on the variety of traditional relationships between religions and states within the countries that now form part of it. The contribution focuses on European laws and the Europeanisation of religious organisations within the context of the shift of state to civil society.

INTRODUCTION

For many Africans, Europe is the place where the colonisers came from. This is, however, also the home of many missionaries who brought the gospel of Jesus Christ and their Christian denominations to Africa. In recent decades, many African Christians have come to Europe, often in the hope to stay there permanently. Visiting European churches, they are surprised that these churches are often more than half empty during worship services. A visitor to mass celebrated in the impressive cathedral, built in the fourteenth and fifteenth centuries in my Belgian home town, Malines, will on any Sunday morning find fewer than two hundred participants, mostly elderly people and a few families with young children, no teenagers, and some African Catholic families. In September 2006, only three men began their training for the priesthood in the Dutch-speaking part of the Belgian Roman Catholic Church, which has some five million members in Flanders. A similar situation of growing secularisation can be found in most of Europe.

A second trend has characterised Europe after World War II, namely the growing integration of the European nation states in the European Union. Over fifty years ago in 1957, France, Germany, Italy, and the Benelux countries – Belgium, the Netherlands, and Luxemburg – signed The Treaty establishing the European Economic Community in

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2 This paper was presented at the consultation on Religions and the State in Search for the Common Good in Pluralistic Societies, which took place on 27-29 August 2007 in Mkar (Benue State), Nigeria.

Rome, also called the Treaty of Rome, joining these countries into a community with the aim of achieving integration via trade, with a view to economic expansion.[3] In 1992, twelve countries[4] signed The Treaty establishing the European Union in Maastricht, the Netherlands (also called the Maastricht Treaty), expanding the original economic aim to broader political objectives. Traditional economic, social, and trade relations where strengthened by new rules envisioning a future single currency, the euro; and a shared foreign and security policy and a policy on justice and home affairs were added. The Treaty of Nice, in 2001, reformed these institutions and changed the voting system in order to prepare for a rapid expansion of the Union. In 2007, Bulgaria and Romania joined the EU. This brought the total number of member states to 27.[5]

It is uncertain whether the Union will basically stay what it has become – a success story of European states closely working together – or whether it will develop further in the twenty-first century to become a United States of Europe. The European Union is not a nation state, but a *sui generis* supranational union, a hybrid form in which decisions are taken partly through member states' consensus (intergovernmentalism), and partly through majorities (supranationalism). The uncertainty of the EU's future is illustrated by the ratification challenges that The Treaty establishing a European Constitution (2004) ran into. Although 18 member states have already signed it, France and the Netherlands could not sign it after the majority of their citizens rejected it in referendums in 2005. In June 2007, the European Council agreed on a Reform Treaty, in which state-like terminology, such as "constitution" and "law", was employed; and where the abolition of national symbols, such as flags, national anthems and mottos, was foreseen for the text of the new treaty.

In this contribution to this conference on religions and the nation state, I describe the European Union in its relation to the religions.

EUROPEAN LAW ON RELIGION

From a legal point of view, the relations between church and state have traditionally been an exclusively national affair. The EU can only act with regard to it if explicitly granted the authority to do so. Religion does not form part of its mandate. This was confirmed by the Treaty of Amsterdam (1997), and re-affirmed by The Treaty establishing a European Constitution (2004).[6] However, at the same time, it became clear that the relations between church and individual nations have an international dimension as well (Van Bijsterveld 2000:163-180; 2006:227-257). The EU has to respect basic rights, among them the right to

3 Further information on the EU, its history and its treaties, can be found online at http://europa.eu

4 Denmark, Ireland and the United Kingdom joined in 1973, Greece in 1981, and Portugal and Spain in 1986.

5 Austria, Finland and Sweden joined in 1995, the Czech Republic, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia in 2004. Croatia, the former Yugoslav Republic of Macedonia, and Turkey, are candidate members.

6 Cf. Article 11 of the Common Declaration of the Treaty of Amsterdam: "1. The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. 2. The European Union equally respects the status of philosophical and non-confessional organisations." The same text is found in Article I-52, first and second sections of The Treaty establishing a European Constitution.

freedom of religion.[7] As a consequence of this basic right, a church-state relationship on the level of the EU is established in some way. This is confirmed in Article I-52, third section, which states:

> Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

Article I-52 forms part of the chapter on "The democratic life of the Union" and has to be read together with Article I-47, second section about "... an open, transparent and regular dialogue with representative associations and civil society".

Next to the above constitutional provision in European law, there exists a second source of European law on religion. All member of the EU are also members of the Council of Europe. The Council was founded in 1949 during the Cold War as an instrument for developing common and democratic principles throughout Europe, based on the European Convention on Human Rights and other relevant texts on the protection of individuals.[8] Article 9 of the European Convention guarantees freedom of thought, conscience and religion.[9] The interpretation given to the Convention by the European Court of Human Rights is, of course, of direct importance for freedom of religion on a national level in the states that are members of the Council of Europe, since it can influence the state church relations in those states.

MODELS OF CHURCH-STATE RELATIONS IN THE EUROPEAN UNION

Traditionally, a distinction is made between three legal models of church-state relations focusing on the constitutional position of religions in Europe, especially within the European Union: a state church system, a separation system and a hybrid system (Robbers 2005:577-589). I will discuss each system, its characteristics, as well the inability of these models to really cover what are important distinctions.

The state church system

This system is characterised by the close relationship between the state and a particular religious community. This relationship is often defined by constitutional law and, therefore, has consequences for the legal position of that community. Such a religious community might be labelled a "state", "national", "established, or "folk" church. Generally, in such a system, constitutional links exists between the church and the state executive, the church and the

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7 Article II-70, section 1, on the Freedom of thought, conscience and religion in The Treaty establishing a European Constitution (2004) reads: "*Freedom of thought, conscience and religion* 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance."

8 Cf. online at http://www.coe.int

9 Article 9 of The Convention for the Protection of Human Rights and Fundamental Freedoms (online at http://conventions.coe.int) states: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

state legislature, and the church and the people. Examples of a state church system include that of England, Denmark, Greece, Finland, Malta and Bulgaria. European state church systems are by no means homogenous. Thus, for example, the Danish state church – the "folk church" of Denmark according to Article 4 of The Constitutional Act of Denmark – is firmly under the control of the state. The State Ministry of Ecclesial Affairs determines the rules that govern the Danish National Church. The latter lacks a synod, a constitution and legal personality: rules regarding membership, the establishment of new parishes, and the ordaining and dismissing of clergy. The clergy have the status of civil servants and are paid by the state (Dübeck 2005:55-76). In contrast to Denmark, intervention by the Greek state in the internal affairs of the Orthodox Church (the "prevailing religion" according to Article 3 of that country's constitution) is highly exceptional. This church has legal personality, and the same article guarantees its self-government by a synod with administrative, legislative, and judicial competence (Papastatis 2005:15-38).

Not only do state church systems in various countries of the European Union include very weak church-state relationships, these countries often also lack clarity regarding the legal regulations pertaining to religions, for example regulations concerning freedom of religion or laws prohibiting discrimination on religious grounds in the countries where such a system exists. Religious freedom and non-discrimination can co-exist in a country with a state church system, provided that legal preference is not accompanied by distinct civil and legal disadvantages for non-adherents to the official religion. The categorisation "state church system" also does not provide information regarding the position of religious minorities within a country following such a system. Under the state church system, the degree of accommodation of minority religions, such as Islam, can vary considerably. Minority religions are generally treated as private organisations, but the degree of state involvement differs greatly – for example between Denmark where no special legal status is granted to religious minorities, and Finland with its very complex registration requirements for minority religions.

To illustrate the complexity of the different models of the state church system, one may compare non-discrimination and the position of religious minorities in the two countries already mentioned, namely Denmark and Greece. Although Denmark is characterised by a strong state intervention in the affairs of the church, the country combines this with strong laws against discrimination against religious minorities. Greece, with its limited intervention by the state in church affairs, does not give minority religions the same guarantee of non-discrimination (Van Bijsterveld 2006:247). Thus, a strong relationship between state and one specific religious group does not automatically contradict openness towards other religious communities. However, it does seem that given the wide variety of forms it can take, categorising a system as a "state church system" leaves many aspects regarding the place of other religions within such a country unspecified, and often tells one more about the history of the state than about the sociological reality.

The separation system

This system of state church relations is based upon constitutional barriers which forbid intervention by the state in the affairs of the church by preventing financial support for and the establishment of any one religion. France, the Netherlands and Ireland are examples of this in the European Union. Contrary to the term "separation system", the aim of such systems is not separation itself, but the use of separation as an instrument towards protecting religious freedom. In order to achieve this, it is not indifference by the state but positive action towards facilitating religious freedom that is required. France is the example par excellence of the separation system. Article 2 of the French law of 1905 – "The Republic does not recognise, remunerate, or subsidise any religious denomination" – and Article 1 of the 1958 Constitution – "France shall be an indivisible, secular, democratic and social Republic" – established the neutrality of the state and its secular position, better known as the *laïcité* of the state. Gradually, France came to realise that, in order to safeguard its neutrality and to protect freedom of religion and equality, an active *laïcité positive* is required. As a consequence, the *Bureau des Cultes* of the Ministry of the Interior plays an active role in creating the practical conditions for public worship in respect of each religion. Various legal provisions have been provided to make it possible for various religions to worship legally. Because the Roman Catholic Church refused to comply with the system of "religious associations" provided for by the law of 1905, a system of "diocesan associations" was recognised as well. And Muslims, for example, use a system of "charitable and educational associations" for the establishment of Islamic schools. Although religious groups are mostly funded by private donors, they might still enjoy some indirect financial support from the state for activities of a general nature, or for major repair works to older churches (Basdevant-Gaudemet 2005:157-186).

The way in which the Irish separation system developed illustrates one such example of an active and positive relationship with religions. Article 44.2 of the Irish Constitution states that

> [t]he State guarantees not to endow any religion ... [and] shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

This is preceded by Article 44.1, which declares that:

> The state acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

Here, too, indirect financial support is provided for religious groups, for example, by way of exemption from taxation of the income of religious groups. Education organised predominantly on denominational lines is also extensively funded by the state (Casey 2005:187-208).

The hybrid or cooperationist system

Such a system is characterised by a separation between state and church, coupled with the recognition of a multitude of common tasks that link state and church. This recognition takes place within a legal framework as an agreement, treaty, or concordat. Spain and Italy

are classic examples of this. Article 16(3) of the Spanish Constitution (1978) proclaims the non-established character of all religions in combination with the duty of civil authorities to cooperate with religious communities, through agreements and concordats (Iban 2005:139-155). The Italian Constitution tries to balance liberty and equality of the individual in religious matters with a system of cooperation between the state and religions on the basis of agreements (Ferrari 2005:209-230). As can be imagined, this system can accommodate a large variety of models, but it is at the same time, a legal model without a strong profile.

EUROPEAN LAWS ON RELIGION IN SOCIOLOGICAL PERSPECTIVE

Russell Sandberg, researcher at the Centre for Law and Religion at Cardiff University, proposes a departure from the above tripartite distinction favoured by ecclesiastical lawyers (Sandberg 2008:329-352). Instead of focusing on the formal aspects of the relationship between church and state, Sandberg wants to look at what these formal relations are really about. In order to do so, he advocates a sociological approach. This will help to get to grips with the relationship between religion, law and society. He wants to use sociology to contextualise contemporary legal debates concerning religion. Sociology of law and religion then is an instrument to evaluate the way in which laws facilitate the social effects of religion.

Sandberg bases his sociological analysis of religion in Europe on the work of Grace Davie – *Europe: the exceptional case*. Davie observes that throughout Europe the same pattern of an unchurched and residually Christian religion emerges. This development makes Europe an exception to the trend in other regions of the modern world where religion continues to be a potent force. Although the sociological decline of the Church's public role is faster in Protestant northern Europe than in the Roman Catholic southern Europe (which is perhaps a generation behind), this does not change the common observable, specifically European, trend of unchurching against a background of a powerful Christian church past. Davie contends that this sociological pattern can be observed in the European constitutional connections between state and church. In the Protestant north this has often resulted in state churches, embodying a combination of national and religious identity. Under such a legal construction, a relatively low religious activity is combined with little tension between church and populace. In Catholic Europe, ecclesiastical arrangements tend towards separation between church and state, which can be explained from by traumatic experiences of power abuse by the church in the past. But both regions have developed systems of regulation of religion, often in the form of constitutionally established relations between state and church. The European approach is characterised by the recognition of religious freedom and the autonomy of religious organisations. A basic level of neutrality, tolerance, and parity is common to the whole continent. No European country has a strong state church system to the extent that other religious groups are not tolerated, and no country has a strong separation system whereby the state is indifferent to religion and religious liberty. European countries place ever-increasing emphasis on being neutral and facilitative in relation to the regulation of religion.

TOWARDS A COMMON LAW ON RELIGION IN EUROPE

Norman Doe, director of the Centre for Law and Religion at Cardiff University, goes one step further. He tries to describe the principles of common law in relation to religion in the European Union (Doe 2010).[10] Doe observed an increase in the treatment of religion in the laws and other regulatory instruments of the European Union since the Maastricht Treaty of 1992. A corpus of norms related to religion, a corpus proper to the European Union, has developed silently and gradually as the need has arisen. This corpus can be called the "European law on religion". Doe finds common principles of the European law in relation to religion in four sources: the laws and other regulatory instruments of the Union; the general principles of the laws on religion of the member states; the European Convention on Human Rights; and the laws of the religious traditions themselves. He identifies eight common principles:

- the principle of the value of religion;
- the principle of the subsidiarity in matters of religion;
- the principle of cooperation: dialogue with religion;
- the principle of religious freedom;
- the principle of the autonomy of religious associations;
- the principle of religious equality (non-discrimination);
- the principle of special protection of religion (conscientious objection); and
- the principle of religious privilege (for example, tax exemptions).

Doe comes to the conclusion that the law of the European Union leans toward the classic cooperation model. The draft European Constitution explicitly lists the principles of the value of religion: subsidiarity, cooperation, freedom, and equality. The principles of religious autonomy, special protection, and religious privilege are not expressly stated, but are natural consequences of the formentioned principles.

SECULARISM AS THE WAY TO INTEGRATE RELIGION INTO EUROPE

The French sociologist of religion, Jean-Paul Willaime,[11] claims that secularism is a European value (Willaime 2010). He identifies three key historical constituents of Europe's identity as a civilisation: (1) the wealth of religious heritage and of philosophical traditions questioning faiths, and their claims and pretensions; (2) the respective autonomy of the spiritual and temporal powers after a long debate on the boundaries between them during the whole of Europe's history; and (3) respect for freedom of conscience, thought, and religion is the consequence of a European history marked by confessional conflicts, religious wars, and anti-Semitism.

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10 He is also involved with the European Consortium for Church and State (http://www.church-state-europe.eu/), which publishes the *European Journal for State and Church Research*.

11 Jean-Paul Willaime is Director of Studies at the *Ecole Pratique des Hautes Etudes* and Director of the *Groupe Sociétés, Religions, Laïcités* in Paris.

Willaime describes European secularism as, firstly, characterised by three elements: Freedom of conscience, thought, and religion. These include the freedom to have or not to have a religion, to change one's religion and to practise one's religion – subject only to respect for the law, democracy, and human rights. Secondly, as equal rights and duties for all citizens – irrespective of their religious or philosophical beliefs – which mean that government and state must not discriminate against persons because of their religious or philosophical positions. And thirdly, as the respective autonomy of the state and religions, which signifies that they each enjoy freedom and independence with regard to the other – subject to respect for the law and democracy. According to Willaime, this triple understanding of secularism leads to a system of recognised religions as the dominant church-state relation. Where the state recognises religions, it acknowledges the participation of religious groups in the education of citizens and the practical exercise of citizenship in public life. This threefold secularisation is not only a legal concept expressed in the texts of the European Convention for Human Rights and of the draft Constitution of the European Union, it is also an expression of the general mentality throughout the continent.[12] A growing number of young adults indicate that they follow no religion. And, even those who identify strongly with one religion favour a separation between political and religious systems.

THE EUROPEANISATION OF RELIGIOUS ORGANISATIONS

Friederike Böllmann, sociological researcher in Marburg, has studied the europeanisation of religious organisations. The European integration process creates a specific institutional environment that challenges religious organisations to position themselves and gain legitimacy in this newly developing public sphere. Important in this process is the perception that religions have of the political situation. In relation to the general development of the EU, the critique of the broader globalisation process that it is too one-sidedly focused on economy and loses track of the social consequences, is also applied to Europeanisation. Religions are also critical of the religious policies of the EU. In the first place, they lack legal status since Article 52 of the draft European Constitution, which refers to open, regular, and transparent dialogue, is still to be ratified. Till now they have depended on the goodwill of politicians. Second, the talk about dialogue with civil society stands in contrast to the practice of one-way communication of the European Commission, which is perceived as being top-down reporting of political decisions. Third, religions often do not feel as if they are taken seriously by the European Commission, which they perceive as thoroughly laicist. Religions have the impressions that the EU considers them more as part of the cultural and national heritage than as relevant partners. And, in recent years, religions feel that they have come to be perceived as a security issue, a threat to democracy. Fourth, the traditional churches have to operate in a much more pluralist setting. Not only does the non-religious world view, *laïcité*, hold the stronger position, placing them in the same category as "communities of conviction" with other non-traditional groups has left them feeling uncomfortable as well.

12 Compare the results of the regularly conducted *European Values Survey*.

What do European politicians expect of religions? First of all, they see them as INGOs (international non-governmental organisations) that should be transparently, representatively, and democratically organised. Second, they judge them not so much on presenting themselves as religions, but as positive contributors to the work of the political actors. Third, religions are considered to be instruments of further integration.

In general, learning processes and adaptation strategies of religious interest groups can be observed. The aim of these groups is a better integration into the European political sphere in order to gain legitimacy. They emphasise their long tradition of democratic thought, their political expertise in EU affairs, their support for EU integration, and their capacity to fulfil an integrative role at EU level. They refer to both their core beliefs and practices (doctrinal, organisational, and individual; and their fundamental beliefs and religious community) as supportive of the European potential for integration, and to non-theological factors (communal, organisational, and individual) as obstacles to Europeanisation (Böllmann 2010).

A THEOLOGICAL ASSESSMENT IN HISTORICAL PERSPECTIVE: A SHIFT FROM STATE TO CIVIL SOCIETY

After the establishment of Christianity as the majority religion in the world of late antiquity, the theory of church and state developed in Medieval Europe in the context of the relation between two dominant institutions. The theological vision of the early church concerning the divine rule in history and its eschatological outcome resulted in a subordinated perception of both church and state, and a critical assessment of the existing socio-political realities.

In the second half of the Middle Ages, the development of the concept of the common good expresses the conviction that the rule of God and the hope of the world cannot be found merely in ecclesial forms. That era witnessed the emergence of a stronger sense of community and civil society. *Communitas* describes a variety of forms at a level between national or imperial powers and those individuals whom they govern: the whole population of a town, associations based on taking an oath, corporations, colleges, confraternities, and professional associations. Such developments created widespread group awareness and a desire on the part of individuals to govern themselves in these communal forms. As a consequence, the relationship between church and society could no longer be reduced to a relationship between them and a monarch, but also between them and other social groups, organisations, and institutions that shape the lives of individuals in their search for the common good.

In that same period Aristotle was rediscovered. His description of the human person as a political animal naturally fitted into the idea of a network of social relations with other persons. Aristotle's use of the concept *bonum commune* as the expression of human fulfilment through exchange of knowledge, practices, and goods, also inspired Thomas Aquinas to write his theological anthropology. According to Aquinas, the purpose of governments is to lead human persons to those social goods that are essential to their social nature. The key concept of common good is linked to related notions such as order and justice. In promoting this common good, political society may exercise a role in fulfilling the divine law as expressing God's providence in a way that exceeds Augustine's limited restraining function of secular

forces. The emergence of new communities was accompanied by a new emphasis on popular sovereignty in the writings of theologians such as John of Paris, Marsilius of Padua, Duns Scotus, and William of Ockham. The political community was to serve its members by seeking the advancement of the common good; power was perceived as residing within the political community as a whole under the rule of God; it was believed that the needs of civil orders are best met by strong secular rule, free of ecclesiastical interference; and ecclesial rule was to be exercised on the basis of the whole community of believers.

The Lutheran Reformation affirmed a secular vocation outside the domain of the church as a sphere in which the divine will was to be fulfilled and the state had to play its role. The Reformed Reformation went one step further with its ambition not only to serve God in the secular realm, but also to actually transform that realm and to create a Godly society. The Protestant Reformation was inspired by the biblical theme of God's dominion over all aspects of life. In order to achieve this, Calvin opted for a close partnership between church and state. He believed that God ordained the office of the magistrate for the maintenance of peace and justice within the boundaries of the state, if necessary with the use of force. The church was to have its own divinely ordained offices that rule the church spiritually, rejecting state control. The magistrates had a duty to uphold not only the second, but also the first table of the law, which outlines our duties to God. This entailed the civil protection of Reformed churches, the suppression of serious heresy, and the prohibition of the mass. In answer to its responsibility towards the secular realm, the church took up the organisation of comprehensive education, poor relief, and moral discipline of all citizens. The magisterial Reformation strengthened the awareness of the secular vocation, while retaining the medieval vision of an organic unity of church and state.

The political and religious fragmentation on the European continent during and after the Reformation led to the appearance of national churches, which was a characteristic of Protestant nations. Since then, churches have lost their dominant position and their national status in West European society. The terrible experiences on the continent with totalitarian states gave rise to the awareness that an active civil society is the best guarantee against both the monopolisation of the search for the common good by the forces of the state, as well as against potential power abuse. David Fergusson (Fergusson 2004:148) adds solidarity and subsidiarity as two theological arguments to support the significance of civil society. In pluralistic societies, he states, local congregations and churches as religious institutions have become part of civil society contributing to the *bonum commune*.

CONCLUSION

European state church relations have become more and more alike, even if various models still exist at the constitutional level in different European nation states. In reality, they all tend toward a cooperation model, which recognises the contributions of religions to society. The state takes a neutral position on the basis of the autonomy of religions and the freedom of religion, and sees itself in the role of a facilitator in relation to religions.

European churches can live with this evolution in state church relations. In fact, they have become conscious of the fact that they should not only relate to the state, but even more so to civil society and that, as part of civil society, they can engage in dialogue with the state.

The main challenge for the European churches does not concern their relationship with the state but with civil society. European law of religion is an expression of a common European secularist mentality. God-talk has become a foreign language in the market place. It is in this context that the churches are challenged to find a role for themselves in this secularised society.

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Keywords / Trefwoorde

European Union / Europese Unie
Laws on religion / Godsdienswette
Civil society / Burgerlike samelewing
Secular culture / Sekulêre kultuur

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